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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,576	06/30/2003	Wayne L. Stockland	01-1685-A	5196
20306 7590 01/22/2007 MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO, IL 60606			EXAMINER SAYALA, CHHAYA D	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 01/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/611,576

Applicant(s)

STOCKLAND, WAYNE L.

Examiner

C. SAYALA

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: Attached PTO-892



**CHHAYA SAYALA
PRIMARY EXAMINER**

Response to Arguments

Applicant's arguments filed 12/28/2006 have been fully considered but they are not persuasive.

Applicant has argued that the final Office action combines a method of manufacturing protein protected ruminant feed (Heitritter) with fat-containing extruded feed nuggets for animals (Lanter) and that while the claims herein are to a method of preparing high energy protected ruminant feed, they are not directed towards the high energy protein protected animal feed.

This position is unclear. The rejection has been made under 35 USC 103, and the reference to Lanter has been relied only for its teaching a "high-energy" feed that contains fat. The rejection clearly delineates the benefit of using Lanter's product. There is no stipulation that a reference which shows a product, made in a similar way, cannot be combined with a reference that teaches the method of making a similar product, the benefit being clear.

At page 6, applicant states that combining the methods in the two references, makes the currently claimed invention obvious to try, because while the Heitritter reference discloses a method similar to the currently claimed method, it does not mention the addition of fat.

The above statement appears to be a traversal that would have been proper were the rejection been made under 35 USC 102. On the other hand, applicant appears to have taken the position that if the reference does not show all the limitations, such as the addition of fat, then it is not an applicable reference.

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Also at page 6, applicant states that Lanter produces a nugget with a water content of about 9 wt%, the current claims produce a feed with a higher moisture content.

The abstract of Lanter teaches a moisture content of less than about 12 wt%, as also col. 2, line 17, compared to the moisture content claimed, which is about 12 to about 16 % by weight (instant claim 1).

Applicant states that there is no motivation, teaching or suggestion to combine the two references.

The Lanter specification states the extruded animal feed nuggets which include oil seed meals and fat, functions as a rumen escape composition and permits the release of beneficial nutrients in the abomasum or subsequent digestive tract. The patentee states that the invention is to a "method of achieving the same level of milk and milk component yield in ruminants which are fed to a lower crude protein diet than those which are fed a normal crude protein diet". This provides the motivation to combine.

Applicant states that Lanter uses an extruder, Heitritter does not.

Heitritter states, at col. 4, lines 25-27, "The cooking may be accomplished in any cooker known in the art for cooking animal foods". It is well known that extruder cooking is one such means.

Applicant states that Lanter runs the extruder at 100 degrees Celsius, while Heitritter cooks the feed at 200 degrees Celsius.

*Heitritter does not cook at 200 degrees Celsius but at 200 **degrees Fahrenheit**.*

See col. 3, lines 4-6, col. 4, line 43. Also, col. 10, line 5, which is claim 1, part c).

And finally, applicant states that while Lanter teaches that the use of fat increases bypass protein level, the currently claimed method does not affect bypass protein levels when compared to feeds that do not use fat, and he points to Test Products and Tables, etc. etc.

In response, first, the Tests and examples given in the instant specification have been carefully considered, and the Test Products and Tables referred to, compare a control (without fat) that has not been cooked, with a product that contains fat that has been cooked and it is reported therein that the bypass protein levels were not increased. This comparison is not probative because not cooking the control composition is not commensurate in scope with the claims or the inventive product/method, which recite/encompass cooking the composition. Second, Heitritter already has taken out a patent drawn to a protein protected ruminant feed that contains all the limitations recited in the instant claims except the fat. Heitritter also teaches a method of making his product, which is remarkably similar. It is known to one of ordinary skill in the art that "high energy" in a ruminant feedstuff is generally interpreted as an ingredient that is selected from fat or carbohydrate. See Moore at col. 2, lines 6-7 or abstract. See also Wellons, published in 1993, which states:

"Ruminants, particularly dairy cattle, have high energy demands during the lactation period, especially during the first one-third of the lactation period. During these periods of higher milk production, conventional cattle feeds, such as corn and alfalfa, lack the

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energy dairy cattle require. As a result, dairy cattle often do not maximize milk yields during this period and also tend to lose body weight due to energy deficiencies in the diet. Fat is an excellent source of energy, if digestibility problems which result from fat intake can be overcome. It has been suggested that, if the proportion of fat or fatty acids in cattle feed, especially during the lactation period, could be increased, the cattle could produce higher milk yields with increased butter fat content without losing body fat and without diminishing the proportion of milk fat in the milk produced."

Also, Block et al. at col. 1, which states:

"Conventional cattle feeds such as corn and alfalfa often fail to provide sufficient energy for cattle, especially lactating dairy cattle during periods of heavy milk production. Feed containing a high proportion of corn also has a tendency to depress the milk fat content of the milk produced by such cattle. Lipid is an excellent energy source, and it is known that if the proportion of lipid in cattle food is increased, lactating dairy cattle produce high milk yields without draining their reserves of body fat and without diminishing the proportion of milk fat in the milk produced."

Note that the references of Moore, Wellons and Block et al. are cited here only to show what was already known in the art at the time the invention was made and what one of ordinary skill in the art would have considered as generally known in the art, such routine knowledge being available to the skilled worker. In considering the disclosure of a reference, it is proper to take into account not only specific teaching of the reference but also the inferences which one skilled in the art would reasonably expected to draw therefrom. See In re Marco Preda 159 USPQ 342, and Simmons Fastener Corp. v

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Illinois Tool Works, Inc., 218 USPQ 547-548, 558. With the advantage of such knowledge in the art, it would have been obvious to the skilled worker who is looking to provide fat in the method of Heitritter, that adding fat would provide benefits such as "high-energy" to Heitritter's feed and the other benefits outlined by the above prior art that forms the base of knowledge that already existed at the time of filing and provided here as evidence only. The Sherman patent has been cited in Lanter et al. and is being provided for applicant's convenience.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


C. SAYALA, Ph.D.



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Primary Examiner
Group 1700.